Supreme Court, U.S.
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No. 07-

IN THE

Supreme Court of the United States

PAUL BAGHERPOUR,

Petitioner,

v.

KENNETH SNYDER and JACQUELINE SNYDER,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. Did the United States District Court for the Eastern District of Pennsylvania, and subsequently the United States Court of Appeals for the Third Circuit confirming the said Lower Court interpret State law, in particular the Pennsylvania Human Relations Act (PHRA) in such manner as to expose the Petitioner to an unlawful abridgement of free speech?

II. Did the United States District Court for the Eastern District of Pennsylvania and subsequently the United States Court of Appeals for the Third Circuit misinterpret and unduly expand this Court's ruling in *Kolstad v. The American Dental Association*, 527 U.S. 526, 119 S. Ct. 2118, 144 L. Ed. 2d 494 (1999) by permitting recovery of punitive damages against a civil defendant without an indication that he or she acted beyond mere willful intent?

LIST OF PARTIES

I. The Petitioner is Paul Bagherpour (a/k/a Farshid Bagherpour), a party Defendant in the proceedings below.

II. Respondents are Kenneth Snyder and Jacqueline Snyder, his wife, who were Plaintiffs in the proceedings below.

III. Dr. Tawoos Bazargani was a party Defendant in the proceedings below, and as of the date of this Petition has not participated in any proceeding before this Court.

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STATEMENT OF JURISDICTION

On June 22, 2007, the United States Court of Appeals for the Third Circuit issued a judgment affirming the judgment of the U.S. District Court for the Eastern District of Pennsylvania; and subsequently, on July 5, 2007, Petitioner, Paul Bagherpour, filed a Petition for Panel Re-Hearing and/or for En Banc Determination of the aforesaid decision.

On July 20, 2007, the United States Court of Appeals for the Third Circuit denied a Petition for Re-Hearing.

This Court may exercise jurisdiction in accordance with Rule 10 of the Rules of the Supreme Court of the United States.

STATUTES

The particular statutory provision, which is the focus point of this case, is the Pennsylvania Human Relations Act which states, *in alia*: "It shall be an unlawful discriminatory practice ... for any person to ... make any inquiry or elicit any information ... concerning religious creed or ancestry — in connection with the lease of any housing accommodation." 43 P.S. § 955(h)(6).

The statute which is directly applicable to the issue of punitive damages is the Fair Housing Act as amended, 42 U.S.C. § 3613(c) which states: "In a civil action ... the court may award to the plaintiff actual and punitive damages and ... may grant as relief as the court deems appropriate ... any other order ..."

STATEMENT OF THE CASE

I. In this case, Kenneth and Jacqueline Snyder filed suit against Defendants, Tawoos Bazargani and Paul Bagherpour, under the Federal Civil Rights Statutes, incorporating the Pennsylvania Human Relations Act (hereafter "PHRA"), seeking compensatory and punitive damages for an alleged discrimination in the Defendants' refusal to rent a condominium to them. Prior to trial, Plaintiffs (hereinafter "Snyders") filed a Motion for Partial Summary Judgment, which was answered by Defendant, Paul Bagherpour. The Motion sought judgment on the issue of statutory liability regardless of intent. The Court below granted partial summary judgment to the Snyders.

II. After a Trial before eight jurors on June 14 and June 15, 2005, a verdict was returned in favor of the Snyders against, *inter alia*, Defendant, Paul Bagherpour, in the amount of $20,000.00 compensatory damages, and $30,000.00 punitive damages. Petitioner has averred that the verdict against him for $20,000.00 compensatory damages (actually one-half of $40,000.00 against both Defendants) is clearly against the great weight of the evidence submitted at the Trial.

In essence, Petitioner alleges that the Snyders produced no substantive evidence of discrimination independent of Paul Bagherpour's technical violation of the PHRA when he made an inquiry into their religious background in connection with the rental of the condominium in Philadelphia. Specifically lacking in any of the testimony and evidence was the issue of actual intent or motive. At no time during the Trial did any

party or witness testify as to why the Defendants refused to rent this condominium other than Defendants' explanation that they desired no pets on the premises, which the Snyders insisted on keeping.

It is also averred that, if the verdict is to stand, the amount awarded for compensatory damages is excessive and unreasonable, because the award of $40,000.00 to compensate the Snyders for their loss is based upon no hard evidence whatsoever. They only testified that they were upset, disturbed, and, in the case of Kenneth Snyder, surprised and angered by Mr. Bagherpour's inquiry. Accordingly, the decision to award compensatory damages in the amount of $40,000.00 was entirely disproportionate to the "injury" sustained.

III. Petitioner finally, and perhaps most importantly, avers that punitive damages awarded were unwarranted and unjustified, because punitive damages are not available in Pennsylvania under the applicable state law. Even if the Court operates under the theory that the punitive damages would be available for violation of the Fair Housing Act, only conduct which is extreme or clearly egregious qualifies.

After the Court concluded with the Jury instructions, defense counsel raised the issue of punitive damages noting that the instruction only used language such as "intentional." It was pointed out that there should be additional language such as malice or wantonness associated in the requirement for punitive damages; however, the Court declined to change the instructions.

REASONS FOR GRANTING THE PETITION

The judgment of the United States Court of Appeals for the Third Circuit should be reviewed by this Court, because of the following reasons set forth in the Argument below.

I. Misconstruction and Misapplication of State Law

In its Opinion below, the Court of Appeals states that the Petitioner does not cite any authority contra the proposition that 43 P.S. § 955(h)(6) makes illegal the mere inquiry into a prospective tenant's religious affiliation and "does not make this an unlawful discriminatory practice without regard to the purpose of the inquiry." The Court then further states that the Supreme Court of Pennsylvania would apply this law "in accordance with its plain meaning." This reasoning is the basis of supporting the granting of partial summary judgment by the Trial Court, and which in turn tainted the entire jury trial. This is because the jurors were lead to believe that Defendant, Paul Bagherpour, had already acted in violation of the statute. Throughout the Trial, and particularly at the end, there was direction from the Judge that the actual intent of Mr. Bagherpour, or his motive, could perhaps mitigate his liability; nevertheless, under these circumstances, the Defendant began the proceedings in an uphill battle to prove a negative, namely that he did not mean to discriminate against the Snyders at all.

The Court of Appeals raised the issue as one of plain-language interpretation. However, this reasoning sidesteps the thrust of Petitioner's argument. Any time

the single utterance of any person is isolated from its context and removed from the intent behind it, or the scienter of the speaker, various conclusions derived therefrom may be inherently suspect. Numerous examples can be offered which would nullify the contrary position. Also, this Court has historically looked askance at a "mere stray remark" as establishing direct evidence of discriminatory intent. *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989).

If hypothetically Mr. Bagherpour had, in fact, signed the Snyders to the condominium lease after all, and the deal had been concluded; then, Bagherpour asks the Snyders: "By the way, what is your religion?" The response being the same and everything else being the same, except for the fact that the deal was consummated, the so-called religious inquiry, even though "in connection with the lease of housing accommodation," creates only a technical violation, but an actionable complaint could arise under the statute.

Another hypothetical is even more relevant today. Mr. Bagherpour, in this instance, is given direction to try and recruit as tenants people of the Jewish faith. The reason is not relevant; however, the Landlord may perversely believe that these people are more financially dependable; or altruistically desires to keep the neighborhood heterogenous and to encourage diversity. There may be no evil motive in these examples, but the real issue is whether or not the derivative question constitutes "discrimination."

In fact, what we are dealing with is the subtlety and nuance of language, its implications and inferences,

usually the basis of subjective interpretation. But the reasoning of the Court of Appeals, and the Trial Court below, would remove all of this context and present these words in a vacuum. This is always dangerous, and clearly skirts on the edge of unconstitutional abridgement of free speech. There should always be the opportunity of raising "non-invidious" reasons for refusing to rent. *Bachman v. St. Monica's Congregation*, 902 F.2d 1259 (7th Cir. 1990).

II. Punitive Damages

In *Kolstad v. American Dental Association*, 527 U.S. 526, 119 S. Ct. 2118, 144 L. Ed. 2d 494 (1999), this Court established a bright-line rule concerning the circumstances under which a jury may consider a request for punitive damages in discrimination cases. The decision involved employment discrimination; however, it was broad enough to also include the FHA. This Court stated that "Where there is no evidence that gives rise to an inference of actual malice or conduct sufficiently outrageous to be deemed equivalent to actual malice, the trial court need not and indeed should not submit the issue of punitive damages to the jury." [citation] 527 U.S. at 539.

In the same decision, this Court also stated the following:

> Most often, however, eligibility for punitive awards is characterized in terms of a defendant's motive or intent [citation] indeed, the justification of exemplary damages lies in the evil intent of the defendant [citation]. Accordingly, a positive element of conscious wrongdoing is always required.

> Egregious misconduct is often associated with the award of punitive damages, but the reprehensible character of the conduct is not generally considered apart from the requisite state of mind.

527 U.S. at 538.

The Court of Appeals below based most of its decision on the Third Circuit case of *Alexander v. Riga*, 208 F.3d 419 (3rd Cir. 2000). In that case, the U.S. Court of Appeals stated that if a jury were to find a violation under the Fair Housing Act, it "necessarily encompasses a finding of intentional discrimination [and] the plaintiffs need not also demonstrate that the conduct was particularly egregious or malicious in order to obtain punitive damages." 208 F.3d at 431. From this statement, it is clear that the Lower Court in this case concluded that Mr. Bagherpour's mere technical violation of the PHRA is sufficient to impose his eligibility for punitive damages regardless of the state of mind.

The result of these interpretations is that, from Mr. Bagherpour's singular utterance of a prohibited inquiry, it removes as a consideration into his transgression any and all motive or willfulness. This is clearly beyond the holding in the *Kolstad* case.

Conceding that the decision in *Alexander v. Riga* was correct, then it is still, nevertheless, inapplicable to the facts of the instant case. In the aforesaid opinion, the Lower Court and the jury clearly found intentional discrimination, and the decision stated the following:

> The Alexanders and the FHP presented evidence that Mrs. Riga persistently refused to deal with African Americans, as opposed to whites, and represented that an apartment was not available for inspection or rental, when it was. The Alexanders described in saddening details the deceptions to which they were subjected and the consequent mortification they suffered. Mrs. Riga told them that "they had just missed" the apartment listed in an advertisement on Sunday, the day before. When the same advertisement appeared the following Sunday, Mr. Alexander asked a friend to call. The friend was told that the apartment was available.

208 F.3d at 431-432. Of course, every decision in every case is based on different factual circumstances; however, in this case, the facts of *Alexander v. Riga* as opposed to Mr. Bagherpour's insignificant question are so dissimilar, as to parallel the difference between night and day.

Furthermore, in the *Alexander v. Riga* opinion, the Court of Appeals specifically stated the following:

> The Supreme Court in *Kolstad* did observe that the mere existence of a civil rights violation is not a guarantee of eligibility for punitive damages *because a defendant might not be aware of the federal law he or she violated*. . . These exceptions, however, do not apply to the Rigas in this case. Here, there is not any suggestion that Mrs. Riga did not

> know that it was illegal and had been for 30 years to discriminate on the basis of race in housing.

208 F.3d at 432 (emphasis added).

In the instant case, there is not a scintilla of evidence that the Petitioner, Paul Bagherpour, had either actual or implied knowledge of the Fair Housing Act or the PHRA. He was an immigrant whose command of English was limited, and he was not a licensed real estate broker or agent. In fact, the evidence shows that, even though technically he was acting as the Co-Defendant's "agent," he was motivated by friendship, and because the landlord, Dr. Bazargani, had difficulty in renting the condominium on her own. The **only** evidence at all which would imply that he acted with discriminatory intent, is the question itself he put to Kenneth Snyder inquiring as to his religion.

Although the *Alexander v. Riga* case was decided within one year of the U.S. Supreme Court's decision in *Kolstad*, three years later, the U.S. Supreme Court again addressed the issue of punitive damages in *State Farm Mutual Auto Ins. Co. v. Campbell*, 538 U.S. 408, 123 S. Ct. 1513, 155 L. Ed. 2d 585 (2003). In that case, this Court juxtaposed the punitive damages to the actual harm inflicted upon the plaintiff, and the relative penalties that could be imposed for comparable misconduct. Although the actual harm inflicted on the Plaintiff in the instant case is reduced to him being angry and/or upset, there is no hard evidence upon which to base this "emotional distress."

Also, PHRA calls for fines imposed by the state agency in the amount of $500.00 per violation. In the *State Farm* decision, this Court, under the third guidepost imposed to justify punitive damages, held that when evaluating the difference between the punitive damages awarded by a jury and the civil penalties authorized or imposed in comparable cases, the State law could have imposed a $10,000.00 fine against the insurance carrier for an act of fraud. Therefore, the millions of dollars awarded in punitive damages against State Farm was excessive. The decision in *State Farm v. Campbell* was based upon the constitutional due process standard. More importantly, under State law, PHRA does not prescribe punitive damages as a civil remedy (*Hoy v. Angelone*, 720 A.2d 745 (Pa. 1998). Punitive damages of $40,000.00 in comparison to a $500.00 fine is a gross inequity.

The Court of Appeals' opinion in this matter also addresses the following regarding failure of the District Court charge to the jury; that they must consider "not only intentional" but "wanton and reckless" conduct in order to impose punitive damages. The Opinion stated: "The District Court did not *abuse its discretion* in declining to give [defense counsel's instruction]" (emphasis added). The error in this statement is that in *Alexander v. Riga*, it was stated: "Whether there is sufficient evidence to support a punitive damages award is a question of law *which we review de novo* [citation]." 208 F.3d at 430 (emphasis added).

Accordingly, it was the obligation of the Court of Appeals to review the imposition of punitive damages not merely as an issue regarding abuse of discretion by the Lower Court. The Court was obligated to determine reasonableness on its own merits. *See also Cooper Industries v. Leatherman Tool Group*, 532 U.S. 424 (2001).

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT FILED JUNE 15, 2007

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

NOS. 06-2396, 05-4051 and 05-3817

Kenneth SNYDER; Jacqueline Snyder, Appellees
in Nos. 06-2396, 05-4051 and 05-3817

v.

TAWOOS BAZARGANI; PAUL BAGHERPOUR

Tawoos Bazargani, Appellant in Nos. 06-2396 and
05-4051, Paul Bagherpour, Appellant in No. 05-3817

On Appeal From the United States District Court
For the Eastern District of Pennsylvania
(D.C. Civil Action No. 02-cv-08845)
District Judge: Hon. John P. Fullam

Submitted Pursuant to Third Circuit LAR 34.1(a)
June 15, 2007.

Before: McKEE, STAPLETON and NYGAARD,
Circuit Judges

(Filed: June 22, 2007)

Appendix A

OPINION OF THE COURT

STAPLETON, *Circuit Judge.*

Appellees Kenneth and Jacqueline Snyder brought this action alleging that appellants Tawoos Bazargani and Paul Bagherpour, in violation of the federal Civil Rights Act, the federal Fair Housing Act ("FHA") and Pennsylvania's Human Relations Act ("PHRA"), inquired regarding the Snyders' religious affiliation and thereaafter refused to rent them a condominium because they were Jewish. Bazargani was the owner of the condominium; she had asked Bagherpour, a friend, to assist her in finding a tenant.

I.

Prior to trial, the District Court entered a partial summary judgment against Bagherpour on the issue of his liability under the PHRA. Its ruling was as follows:

> The Pennsylvania Human Relations Act provides: "It shall be an unlawful discriminatory practice . . . for any person to . . . make any inquiry or elicit any information . . . concerning religious creed or ancestry – in connection with the lease of any housing accommodation." 43 P.S. § 955(h)(6). It is conceded that, on December 8, 2000, in the course of a telephone conversation with plaintiff Kenneth Snyder, Mr. Bagherpour did in fact ask what the Snyders' religious

affiliation was. Since that inquiry violated the statute, plaintiffs are entitled to partial summary judgment on liability, to that extent, against the defendant Bagherpour."

App. at 3.

After a two-day trial, the jury answered the following interrogatories in the following manner:

THE COURT: To your first question:

Did Dr. Bazargani decline to rent the condominium to plaintiffs because of their religious affiliation?

You say: Yes.

No. 2:

In asking – Mr. Bagherpour did ask about plaintiffs' religion. In asking that question, was Mr. Bagherpour seeking information which would affect plaintiff's suitability as tenants?

You say: Yes.

3:

By asking about plaintiffs' religion, Mr. Bagherpour violated the Pennsylvania

Appendix A

Humans Relations Act: Is Dr. Bazargani also liable for that violation, that is, was Mr. Bagherpour her agent acting within the scope of his agency?

You say: Yes.

And No. 4:

State the amount of compensatory damages sustained by plaintiffs as a result of the violation or violations you have found.

You say: $40,000.00

And No. 5:

State the amount of punitive damages, if any, to be paid by each defendant.

You say: Dr. Bazargani, $20,000.00 and Mr. Bagherpour, $30,000.00

Do you all agree on those answers?

THE JURY: Yes.

App. at 748-49.

The District Court denied motions of both defendants for a new trial. While finding the jury's verdict "extremely generous," the Court was "not

persuaded that there [was] justification for setting the verdict aside." App. at 10. In response to the defendants' argument that it had erred in submitting the punitive damage issue to the jury, the Court ruled that punitive damages were appropriate under the FHA:

> Since the jury, in answers to interrogatories, expressly found that the defendant Agent had violated the terms of the statute by making the prohibited inquiry about religion, and that plaintiffs' religion was a substantial factor in the ultimate decision not to lease the property to them, it was entirely proper to submit the issue of punitive damages to the jury. *Alexander v. Riga*, 208 F.3d 419, 431 (3d Cir. 2000) [(holding that punitive damages are available for intentional violations of the FHA)].

App. at 3. Both defendants appealed.

While these two appeals were pending (*i.e.*, Nos. 05-3817 and 05-4051), Bazargani filed a third appeal from a supersedeas order (No. 06-2396). This Court advised the Snyders that, if they obtained an order from the District Court waiving the bond requirement pending a determination by this Court on the merits of the underlying appeals at 05-4051 and 05-3817, Bazargani's appeal at 06-2396 would be moot. The Snyders obtained such an order from the District Court temporarily waiving any bond requirement pending this Court's ruling on the merits of Bazargani's appeal at 05-4051 and

Bagherpour's appeal at 05-3817. Accordingly, Bazargani's appeal at 06-2396 will be dismissed as moot.

II.

Appellant Bagherpour insists in his appeal that: (1) the District Court erred in granting partial summary judgment on the issue of his liability under the PHRA; (2) there is insufficient evidence to support the jury's finding of discriminatory intent; (3) there is insufficient evidence to support the jury's finding that the Snyders sustained actual injury; (4) the District Court erred in not instructing the jury that it could award punitive damages for "intentional" discrimination on the basis of religion only if that discrimination was "wanton and reckless" (App. at 746); and (5) plaintiffs' counsel, in his closing remarks, improperly asked the jury to act as "Attorney Generals" and "send a message" that discrimination must be punished. We find each of these arguments unpersuasive.

We do not understand Bagherpour to dispute that he asked the Snyders about their religious affiliation in connection with the leasing of a housing accommodation. Nor does he cite us to any authority for the proposition that 43 P.S. § 955(h)(6) does not make this an unlawful discriminatory practice without regard to the purpose of the inquiry. We agree with the District Court that the Supreme Court of Pennsylvania would apply § 955(h)(6) in accordance with its plain meaning and that partial summary judgment was appropriate.

While Bagherpour did not admit that in asking about the Snyders' religious affiliation he was "seeking information which would affect plaintiffs' suitability as tenants," there was ample circumstantial evidence to support the jury finding to that effect. Similarly, the record contains ample direct and circumstantial evidence to support the jury's finding that the Snyders sustained actual injury in the form of mental and emotional distress. While we agree with the District Court that the jury's award of compensatory damages of $40,000 to the two plaintiffs was generous, we also agree that it is not so excessive that it can properly be set aside.

The District Court instructed the jury that it could award punitive damages if it concluded that Bagherpour intentionally asked about the Snyders' religious affiliation in order to secure information that would affect their suitability as tenants and that Bazargani intentionally declined to rent the condominium to the Snyders because of their religious affiliation. The District Court declined the request of Bagherpour's counsel to instruct the jury that the defendants' conduct would have to be "not only intentional" but "wanton and reckless." App. at 746. While it is true that "wanton and reckless" misconduct can sometimes serve as a *surrogate* for intentional misconduct, giving rise to punitive damage liability, both are not required. Indeed, wanton disregard and recklessness are generally regarded as

inconsistent with intentional misconduct. The District Court did not abuse its discretion in declining to give it.[1]

We do not agree with Bagherpour that the closing argument of plaintiffs' counsel asked the jury to reach "a decision based upon issues outside the evidence and testimony of [this] case." Bagherpour Br. at 13. Nor do we regard his remarks referencing "Attorney Generals" and "sending a message" to be inappropriate in an FHA case seeking punitive damages. *Alexander v. Riga*, 208 F.3d 419, 425-26 (3d Cir. 2000) (noting Congress's reliance on "private attorneys general" to vindicate a policy "of the highest priority" embodied in the FHA); *Settlegoode v. Portland Pub. Schools*, 371 F.3d 503, 519 (9th Cir. 2004) ("Reminding the jury that they have the capacity to deter defendants and others similarly situated is certainly

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1. We are mindful of the fact that punitive damages are not available under the PHRA. *See Hoy v. Angelone*, 720 A.2d 745 (Pa. 1998). The plaintiffs proceeded here on the basis of both the PHRA and the federal FHA, however, and the District Court's instructions on punitive damage were consistent with the law concerning the availability of punitive damages under the FHA. *See Alexander v. Riga*, 208 F.3d 419, 431 (3d Cir.2000) ("[B]ecause of the jury's finding of intentional discrimination [in violation of the FHA], the plaintiff need not also demonstrate that the conduct was particularly egregious or malicious in order to obtain punitive damages."). We note that Bagherpour does not take issue with the District Court's conclusion that the intentional discrimination found by the jury was a violation of the Fair Housing Act, and the jury's verdict regarding punitive damages can thus stand based on that Act even though not authorized by the PHRA.

legitimate where punitive damages are at stake ."); *The Emery-Warehouse Co. v. Rhode Island Hospital Trust National Bank*, 757 F.2d 399, 410 (1st Cir. 1985) ("send a message" closing statement appropriate because "counsel is permitted to argue the need for an award of punitive damages as a deterrent against similar conduct by this defendant or by others").

III.

Bazargani, proceeding *pro se*, contends that the judgment of the District Court against her must be reversed because (1) one of the Snyders' witnesses, Larry Ceisler, committed perjury during his cross examination; (2) she and the Snyders had reached a settlement agreement prior to trial; and (3) Bagherpour ceased to be her agent "as soon as [she] learned about the Snyders' dog" because she had made it clear to Bagherpour that she would not permit an animal in her property. Bazargani Br. at p. 16. We are not persuaded.

Ceisler testified on cross examination that he had graduated from law school, passed the bar, secured a bar number, and practiced for approximately four years. Bazargani insists that Ceisler earlier testified in an arbitration proceeding that he had not secured a bar number. She did not, however, choose to cross examine him at trial about this alleged prior inconsistent statement. Moreover, Ceisler's status with the bar had nothing to do with his testimony and was not material to any issue presented by the facts of this case. In all events,

a prior inconsistent statement of a witness clearly provides no basis for overturning a jury's verdict.

As early as the Fall of 2004, the Snyders offered to settle their claims against Bazargani with an exchange of mutual releases. The parties thereafter exchanged forms of release, but they could not agree upon one that Bazargani was willing to sign. The last form she submitted to the Snyders contained language the District Court described as "virtually incomprehensible." App. at 2. As trial approached, the Snyders offered Bazargani a final opportunity to settle for an exchange of mutual general releases, setting a deadline of April 29, 2005. On May 4, 2005, the Snyders notified Bazargani that, not having received an executed release, they would pursue their claims at trial. On June 10, 2005, five days before trial, Bazargani executed and submitted the form of general release that had been given to her in the Fall of 2004. She then proceeded to trial without raising settlement as a defense. Clearly, the Snyders' offer of settlement had been withdrawn before Bazargani executed a release and, in any event, Bazargani is not in a position after the jury's verdict to make a contrary claim.

With respect to Bagherpour's agency, the jury determined that he was Bazargani's "agent acting within the scope of his agency." App. at 748. There is ample evidence to support this finding, and it cannot be disturbed. Moreover, the judgment does not rest solely on this finding. The jury also concluded that Dr. Bazargani personally "decline[d] to rent the

condominium to plaintiffs because of their religious affiliation," *id.*, which is an independent violation of the FHA, 42 U.S.C. § 3604(a), and the PHRA, 43 P.S. 955(h)(1).

IV.

The judgment of the District Court in No. 05-3817 and 05-4051 will be affirmed. The appeal in No. 06-2396 will be dismissed as moot.

APPENDIX B — MEMORANDUM AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA FILED JULY 29, 2005

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION

NO. 02-08845-JF

KENNETH SNYDER and JACQUELINE SNYDER

v.

TAWOOS BAZARGANI and PAUL BAGHERPOUR

MEMORANDUM AND ORDER

Fullam, Sr. J. July 28, 2005

The defendant Tawoos Bazargani (hereinafter referred to as "Owner") is the owner of a certain condominium property in Philadelphia which she leases to tenants. The defendant Paul Bagherpour (hereinafter referred to as "Agent") acted as her real estate agent in leasing the property. Plaintiffs sought to lease the condo, which had been advertised as available for rent. After plaintiff Kenneth Snyder expressed his willingness to lease the property, the defendant Agent asked Mr. Snyder what his religious affiliation was, and Mr. Snyder replied that he was Jewish. A few days later, the

Snyders were informed that the Owner would not lease the property to them. They brought this action for violation of the Fair Housing Act and the equivalent Pennsylvania statute. The jury awarded substantial damages against both defendants. Both defendants have filed motions for a new trial.

The defendant Owner was not represented by counsel at trial. She had been represented by counsel at earlier stages of this litigation. The case went to arbitration. The arbitrators rendered a decision favorable to the plaintiffs. At that point, in various conferences before another judge of this court, to whom the case was then assigned, counsel reached a modest settlement, contingent upon the exchange of releases. Contrary to her counsel's advice, the defendant Owner rejected the settlement, and insisted upon proceeding to the *de novo* trial which plaintiffs were entitled to, since they had appealed from the arbitration award. Her counsel then withdrew, and she has proceeded *pro se* since then.

While the case was pending, plaintiffs' counsel again confirmed to the defendants that plaintiffs were willing to carry out the agreed settlement, provided the defendants signed the required release by a specified date. The defendant Owner did not agree, and the case proceeded to trial.

The jury found both defendants liable, and awarded $40,000 in compensatory damages, plus $20,000 in

punitive damages against the Owner, and $30,000 in punitive damages against the defendant Agent.

In her *pro se* "Motions for a New Trial and to Alter the Judgement," the defendant Owner asserts that the trial should not have occurred and its results should now be set aside, because, five days before trial, she finally signed the requested release. Her offer to settle was then rejected by plaintiffs, as having been tendered too late. The Owner's post-trial motion plainly lacks merit.

In a separate motion for a new trial, the defendant Agent (who is represented by counsel) argues that the compensatory award is grossly excessive, and that the court erred in submitting the issue of punitive damages to the jury.

Since the jury, in answers to interrogatories, expressly found that the defendant Agent had violated the terms of the statute by making the prohibited inquiry about religion, and that plaintiffs' religion was a substantial factor in the ultimate decision not to lease the property to them, it was entirely proper to submit the issue of punitive damages to the jury. *Alexander v. Riga*, 208 F.3d 419, 431 (3d Cir.2000).

The defendant Agent also seeks a new trial because plaintiffs' counsel, at one point, urged the jury to "send a message" to the defendants about the importance of avoiding discriminatory practices. No objection was voiced at the time, so the issue has been waived. Moreover, in my view, no error was committed. This was

not a criminal case, where such an argument would be improper. In a civil case, a plaintiff seeking punitive damages should certainly be allowed to explain what punitive damages are intended to achieve, namely, to "send a message" to deter repetition of the discriminatory conduct.

Although not material to deciding the present motion, it bears mention that the Agent's trial counsel, in his closing argument, saw fit to make arguments which really were improper. He expressed his personal view that the anti-discrimination statutes were a bad idea, and that a property owner should be permitted complete freedom in deciding whom to accept as tenants. He also expressed his personal opinion by scoffing at the testimony of the wife-plaintiff that, because she had long been exposed to discrimination in her earlier life, she had experienced emotional trauma as a result of plaintiffs' rejection by the defendants. His complaint about his opponent's argument rings hollow.

Finally, while the jury's verdict was extremely generous, I am not persuaded that there is justification for setting the verdict aside.

For all of the foregoing reasons, defendants' post-trial motions will be denied.

An Order follows.

Appendix B

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF PENNSYLVANIA**

CIVIL ACTION

NO. 02-08845-JF

KENNETH SNYDER and JACQUELINE SNYDER

v.

TAWOOS BAZARGANI and PAUL BAGHERPOUR

ORDER

AND NOW, this 28th day of July 2005, upon consideration of defendants' post-trial motions, and plaintiffs' responses, IT IS ORDERED:

That the defendants' post-trial motions are DENIED.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.

APPENDIX C — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT DENYING PETITION FOR REHEARING FILED JULY 20, 2007

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Nos. 06-2396, 05-4051 and 05-3817

KENNETH SNYDER; JACQUELINE SNYDER
Appellees in Nos. 06-2396, 05-4051 and 05-3817

v.

TAWOOS BAZARGANI; PAUL BAGHERPOUR
Tawoos Bazargani, Appellant in
Nos. 06-2396 and 05-4051
Paul Bagherpour, Appellant in No. 05-3817

SUR PETITION FOR REHEARING

BEFORE: SCIRICA, *Chief Judge*, SLOVITER, McKEE, RENDELL, BARRY, AMBRO, FUENTES, SMITH, FISHER, CHAGARES, JORDAN, HARDIMAN, STAPLETON,* and NYGAARD,* *Circuit Judges*

The petition for rehearing filed by petitioners in the above-entitled case having been submitted to the judges

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* Hon. Walter K. Stapleton and Hon. Richard L. Nygaard were members of the original panel. Their votes are limited to panel rehearing only.

who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is denied.

By the Court,

/s/ Walter K. Stapleton
Circuit Judge

District Court in No. 05-4051 entered June 16, 2005, is AFFIRMED. The judgment of the said District Court in No. 05-3817 entered August 1, 2005, is AFFIRMED. Costs taxed against appellants. All of the above in accordance with the opinion of this Court.

ATTEST:

/s/ Marcia M. Waldron
Clerk

DATED: June 22, 2007

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(2)

No. 07-456

FILED
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SUPREME COURT, U.S.

In The

Supreme Court of the United States

PAUL BAGHERPOUR,

Petitioner,

v.

KENNETH SNYDER and JACQUELINE SNYDER,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I. Background

Following a two-day trial in June, 2005, the Jury found that petitioner Paul Bagherpour and co-defendant Tawoos Bazargani committed deliberate violations of the Fair Housing Act, 42 U.S.C. § 3601, *et seq.*, and Pennsylvania's Human Relations Act, 43 P.S. § 955(h)(1). Specifically, the Jury found that Bagherpour and Bazargani refused to rent Bazargani's condominium to plaintiffs Kenneth Snyder and Jacqueline Snyder because the Snyders are Jewish.

The Jury further found that at one point during negotiations for the rental property, Bagherpour had questioned plaintiff Kenneth Snyder about his religious affiliation to determine the Snyders' suitability as tenants. In granting the Snyders partial summary judgment against Bagherpour on the limited issue of his liability under § 955(h)(6) of the Pennsylvania Human Relations Act, which prohibits property owners or their agents questioning prospective tenants about their religious affiliation, the District Court's relied on Bagherpour's admission that he had indeed questioned Kenneth Snyder about Snyder's religious affiliation.

Based on the Jury's finding that both Bagherpour and Bazargani had engaged in intentional discrimination, the Jury awarded the Snyders $40,000 in compensatory damages against both defendants. In addition, the Jury awarded the Snyders $30,000 in

punitive damages against Bagherpour, and $20,000 in punitive damages against Bazargani. Based on the Jury's verdict, the District Court entered judgment against both defendants in the total amount of $90,000.

Both Bagherpour and Bazargani filed separate motions for new trials, which the District Court denied. Both Bagherpour and Bazargani appealed and, on June 22, 2007 the Court of Appeals for the Third Circuit issued a non-precedential opinion affirming the District Court's judgment in its entirety. Bagherpour has now filed a Petition for Writ of Certiorari, raising two issues for this Court's review.[1]

II. Argument

A. Bagherpour's First Amendment claim is premised on irrelevant hypotheticals in which tenants suffer no injury, contrary to the Jury's express finding below

As the Third Circuit recognized, Bagherpour never denied "that he asked the Snyders about their religious affiliation in connection with the leasing of a housing accommodation." [Bagherpour App. 6a]. Nor does Bagherpour dispute that the Pennsylvania Human Relations Act prohibits any person from making

[1] On September 25, 2007, Bazargani filed her own Petition for Writ of Certiorari, to which the Snyders have filed a timely Brief in Opposition.

"any inquiry or elicit any information ... concerning religious creed or ancestry – in connection with the lease of any housing accommodation." 43 P.S. § 955(h)(6).

Rather, Bagherpour argues – for the first time – that if § 955(h)(6) is read to not require a subjective intent to discriminate, the prohibition "clearly skirts on the edge of unconstitutional abridgement of free speech." [Petition at p. 6].

First, Bagherpour failed to raise any First Amendment challenge to § 955(h)(6) below, thus waiving the first issue presented in his Petition for Writ of Certiorari. Second, in each of the hypothetical violations of § 955(h)(6) suggested by Bagherpour, the prospective tenant obtains the apartment and thus suffers neither injury nor even, arguably, any discrimination. Here, in contrast to Bagherpour's victimless hypotheticals, the Jury found that Bagherpour did in fact ask about the Snyders' religious affiliation to determine their "suitability as tenants" and, following that inquiry, that the Snyders were rejected as tenants. [Bagherpour App. 3a (Special Interrogatory No. 2)].

As the Third Circuit recognized, although Bagherpour never admitted a subjective intent to discriminate, "there was ample circumstantial evidence" to support the Jury's finding that Bagherpour engaged in intentional discrimination in violation of both Pennsylvania's Human Relations Act and the federal Fair Housing Act. [Bagherpour App. 7a]. Moreover, the Third Circuit noted, the Jury likewise had ample evidence to find that the Snyders suffered

real injury in the form of mental and emotional distress. [*Id.*].

Finally, the Third Circuit agreed with the District Court that the Pennsylvania Supreme Court would apply § 955(h)(6) in accordance with its plain words, and not engraft onto the statute any inquiry about why a property owner asks a prospective tenant about his or her religious affiliation. [Bagherpour App. 6a]. The Snyders respectfully suggest that it is eminently rational, and indeed laudatory, that the statute established a bright-line or blanket prohibition concerning questions about a prospective tenant's race, religion, *etc.*, as the face of invidious discrimination seldom shows itself for what it is. Certainly, nothing in Bagherpour's Petition demonstrates that both the Third Circuit and District Court failed to properly construe or correctly apply § 955(h)(6).

B. Bagherpour's objection to the Jury's punitive damages award ignores the Jury's express finding that Bagherpour intentionally discriminated against the Snyders because they are Jewish

Bagherpour also seeks review of the Jury's $30,000 punitive damage award, suggesting that the Third Circuit had somehow misconstrued or misapplied this Court's holding in *Kolstad v. Am. Dental*

Ass'n, 527 U.S. 526, 535-36 (1999).[2] Although his argument is not entirely clear, Bagherpour appears to suggest that the Jury improperly awarded punitive damages premised on Bagherpour's "singular utterance of a prohibited inquiry . . . which "remov[ed] as a consideration into his transgression any and all motive or willfulness." [Petition at p. 7]. According to Bagherpour, such a result cannot be squared with this Court's holding in *Kolstad v. Am. Dental Assoc.*, 527 U.S. 526 (1999).[3]

Again, however, Bagherpour's argument is premised on a wholesale misrepresentation of the Jury's verdict. Contrary to Bagherpour's description, the Jury awarded punitive damages not because Bagherpour simply asked an idle question about Kenneth Snyder's religion, but because Bagherpour asked that question with the intent to determine the Snyders' "suitability as tenants." As the Jury found, and as

---

[2] Significantly, Bagherpour never once cited *Kolstad* in his initial brief to the Third Circuit. Bagherpour likewise never claimed in his initial brief to the Third Circuit that the punitive damage award of $30,000 was in any way excessive. In his Petition for Writ of Certiorari, Bagherpour mistakenly states that the punitive damage award was $40,000, and then erroneously compares the punitive damage award to an alleged statutory fine as opposed to the $40,000 the Jury awarded for compensatory damages. [Petition at p. 10].

[3] *Kolstad* did not involve punitive damages under the Fair Housing Act; rather, *Kolstad* involved the availability of punitive damages under Title VII, 42 U.S.C. § 2000e *et seq.*, and the statutory construction of 42 U.S.C. § 1981a, which specifically limits and qualifies the availability of such damages.

ample evidence established, when Kenneth Snyder informed Bagherpour that the Snyders were Jewish, both Bagherpour and Bazargani rejected the Snyders as tenants because of their religious affiliation. *See Alexander v. Riga*, 208 F.3d 419, 431 (3d Cir. 2000) ("[B]ecause of the jury's finding of intentional discrimination [in violation of the FHA], the plaintiff need not also demonstrate that the conduct was particularly egregious or malicious in order to obtain punitive damages.").

Thus, the Jury's punitive damage award was premised on a finding of intentional and illegal discrimination prohibited by the Fair Housing Act. Although Bagherpour, in his Petition to this Court, seeks to portray himself as "an immigrant whose command of English was limited," (Petition at p. 9), and as someone who did not possess actual or constructive knowledge of the Fair Housing Act or the Pennsylvania Human Relations Act, Bagherpour neglects to note that he has been in the United States since 1978, received a college degree in electrical engineering, owned five rental properties himself, and worked for the Commonwealth of Pennsylvania for seven years in the Department of Engineering before going into business for himself. [App. 2 to App. 6].

Finally, while Bagherpour appears to criticize both the District Court and the Third Circuit for the jury instruction that the District Court provided on punitive damages, Bagherpour neglects to inform this Court that he failed to provide *any* proposed jury

instructions to the District Court prior to its charge to the Jury.

III. Conclusion

Presenting no colorable claim of constitutional significance or otherwise worthy of this Court's review, Bagherpour's Petition for Writ of Certiorari must be denied.

Respectfully submitted,

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November 1, 2007

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF PENNSYLVANIA

KENNETH SNYDER, et al.	CIVIL ACTION NO. 02-CV-8845
Plaintiff	Philadelphia, Pennsylvania June 14, 2005
vs.	
TAWOOS BAZARGANI, et al.	JURY TRIAL – DAY I
Defendants	

BEFORE THE HONORABLE JOHN P. FULLAM
UNITED STATES DISTRICT COURT JUDGE
And a Jury

APPEARANCES:

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Deputy Clerk/ Rosalind Burton-Hoop

ESR Operator: Michael Baker

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* * *

speaking Persia?

A. Of course. We speak Turkish, a mother language.

Q. So, as – Azerbaijan is – if I can clarify it, a section of Iran, in which the language is different?

A. Yes.

Q. Do you speak Persian?

A. I – I do.

Q. And –

THE COURT: Do you also speak Kurdish?

THE WITNESS: I somehow – a little bit.

BY MR. BEIFELD:

Q. So, when did you come to the United States?

A. It was November 5th, 1978.

Q. Okay.

Before I get in to that, I think I should ask, what is your religion, Mr. Bagherpour?

A. I do not practice any religion.

Q. Is you family or were – was your family Muslims?

A. They are not – they are called Muslim, but they are not practicing Islam.

Q. And that's true of you, also?

A. That's right.

Q. And what about your family here, I mean, is your – are you married, by the way?

A. Yes.

[1.142] Q. And what religion is your wife?

A. She's Iranian, also.

Q. And does she practice a religion? What is her religious –

A. No.

Q. – background?

A. She considered Muslim, anybody born in Islamic country – majority – considered Muslim.

But it doesn't mean they practice –

Q. Okay.

A. – Islam.

Q. Okay.

So, you came to the United States in 19 – I'm sorry, what was the year, 19 –

A. November 5th, 1978.

Q. Okay.

Why did you come to the United States?

A. I had a student visa to attend a university.

Q. What university did you attend?

A. First, it was University of Nebraska and University of Oklahoma and end up at Norfolk State University in Virginia.

Q. And in Norfolk, Virginia, did you finally receive a degree?

A. Electronics Engineering degree.

Q. And what year was that?

A. That was 1986, I believe.

Q. Okay.

* * *

[1.144] After you got your degree, what did you do for a living?

A. I was employed by State of Pennsylvania in Philadelphia for seven years.

Q. Okay.

THE COURT: Doing what?

THE WITNESS: Department of Engineering at Sam Davis – near the King of Prussia.

THE COURT: Thank you.

BY MR. BEIFELD:

Q. Okay.

And after seven years, what did you do after?

A. I'm self employed – after that, I decided to go to my business – my own business.

Q. Okay.

And what was the business you started?

A. I started with a gas station.

Q. Okay. All right.

And continue, after that?

A. Continue after that to car wash and I had five rental properties –

Q. Was this all at once or –

A. – at the meantime.

Q. – did it come in sequence?

A. It comes when I make the money, I invest on something.

[1.145] Q. Okay.

Do you still have the car wash?

A. No, I sold the car wash.

Q. Do you still have the gas station?

A. No, I sold it.

Q. Okay.

Do you still have five rental properties?

A. No, I have three, I sold two.

Q. Did you apply for citizenship for the U.S.?

A. Yes.

Q. And are you a citizen?

A. Yes.

Q. Did you ever – even though you – well, strike that.

You have five properties. Did you ever apply for a real estate license?

A. Never.

Q. Did you ever consider applying for a real estate license?

A. No.

THE COURT: Do you have – do you have an office anywhere or do you just work out of your home?

THE WITNESS: I – I do not have an office.

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(3)

NO. 07-456

FILED
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SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

PAUL BAGHERPOUR
Petitioner

vs.

KENNETH SNYDER and JACQUELINE SNYDER
Respondents

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

REPLY TO BRIEF IN OPPOSITION

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REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I. Introduction

In this Reply Brief, Petitioner wishes to point out the error in a number of statements by Respondents, which are at best misleading, and at worst outright falsehoods.

II. Counter-Argument

A. On Page 3 of the Brief in Opposition, Respondent states: "Bagherpour argues - *for the first time* - that...the prohibition clearly skirts on the edge of unconstitutional abridgement of free speech." Furthermore, Respondent also states: "First, Bagherpour failed to raise any First Amendment challenge to §955(h)(6) below, thus waiving the first issue presented in his Petition for Writ of Certiorari." (Emphasis supplied)

These statements are a direct contradiction to the Record below. Defendant, Paul Bagherpour, filed in his Response to Plaintiffs' Motion for Partial Summary Argument language quite similar to the very Petition for this Writ of Certiorari, which stated as follows:

> "In fact, what we are dealing with is the subtlety and nuance of language, its implications and inferences, usually the basis of subjective

> interpretation, but Plaintiffs' argument would remove all of this context and present these words in a vacuum. This is always dangerous and in many instances *skirts on the edge of unconstitutional abridgement of free speech.*" (emphasis added)

Also, in Defendant Bagherpour's closing argument, the First Amendment and the non-abridgement of free speech was alluded to by counsel, which is also part of the Record below.

B. Secondly, on Page 5 of the Brief in Opposition, it is stated in a footnote that "Bagherpour likewise never claimed in his initial brief to the Third Circuit that the punitive damage award of $30,000 was in any way excessive."

Of course, the Petitioner has all along claimed that the imposition of punitive damages was not merely "excessive" but a misapplication of law in its entirety. Nevertheless, in the initial Brief by Petitioner before the Third Circuit, it was stated in the Summary Statement that "Appellant finally avers that punitive damages awarded were unjustified..." Also, in comparing the punitive damages in the instant case with a similar case from the Second Circuit (Portee v. Hastaba), the argument was advanced that said case considered an analysis of the net worth of the defendant before imposition of punitive damages, to determine whether or not they were excessive.

C. Finally, it is stated on Page 3 of the Brief in Opposition that the opinion by the Third Circuit below stated: "there was ample circumstantial evidence to support the Jury's finding that Bagherpour engaged in intentional discrimination." This is true; however, in Bagherpour's Petition for Reconsideration, it was pointed out that, if in fact there was such circumstantial evidence, rather than making a vague generalization regarding the 300 pages of evidence and testimony, the Third Circuit was obligated to elaborate and specify the so-called circumstantial evidence which supported the Jury's conclusion, since Petitioner had averred that there was no such evidence.

III. Conclusion

For the above reasons, Petitioner has filed this Reply to the Brief in Opposition.

Respectfully submitted,

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November 8, 2007